

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Fareway Stores, Inc.,**  
Petitioner-Appellant,

v.

**Warren County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-91-0214**  
**Parcel No. 63-270-02-0020**

On August 23, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Fareway Stores, Inc. was represented by Garrett Piklapp, General Counsel for Fareway Stores, Inc., Boone, Iowa. County Attorney John Criswell is counsel for the Board of Review, and Assessor Brian Arnold represented it at hearing. Both parties submitted evidence in support of their position. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Fareway Stores, Inc., owner of property located at 1711 Sunset Drive, Norwalk, Iowa, appeals from the Warren County Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2011, assessment and valued at \$2,555,600;<sup>1</sup> representing \$580,000 in land value and \$1,975,600 in improvement value. Fareway protested to the Board of Review on the grounds that the assessment was not equitable as compared to similar properties in the taxing jurisdiction under Iowa Code section 441.37(1)(a)(1) and that the property was assessed for more than authorized by law under section 441.37(1)(a)(2). Fareway claimed \$1,900,000 was the

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<sup>1</sup> The total assessment was also adjusted by urban revitalization abatement, which is not at issue in this appeal.

actual value of the subject property. The Board of Review granted the protest, in part, and reduced the value to \$2,182,200; allocating \$580,000 to land value and \$1,602,200 in improvement value.

Fareway then appealed to this Board on the same grounds.

The subject property is located just off the Route 28 business corridor in Norwalk and is a 26,990 square-foot, concrete, tilt-up and steel building operating as a Fareway grocery store. It is also improved by a 648 square-foot, truck well; a dock leveler; an overhead door; a 130 square-foot, loading dock; and 308 square feet of canopy. The improvements were built in 2007. The improvements are located on a 5.11-acre site with 93,000 square feet of concrete paving and yard lighting. On the property record card, the improvements are considered in normal condition. The improvements are also adjusted 10% for functional obsolescence and 10% for economic obsolescence.

Fareway submitted an appraisal in support of its claims. Randal L. Meiners of Valuation Resources, Inc., Pleasant Hill, Iowa, completed a summary appraisal report reflecting an effective date of April 12, 2011. Meiners valued the subject property at \$1,900,000.

Meiners testified at hearing regarding his three approaches to value: cost, sales, and income.

To value the property using the cost approach, Meiners chose three land sales located along Sunset Drive, where the subject property is located, and Highway 28, the major north-south street running through Norwalk.. The sales took place in 2005, 2006, and 2008. Meiners noted that new development has stagnated over the past three years with the downturn in the economy. The sales ranged from \$2.92 per square foot to \$6.59 per square foot. The sites ranged in size from 44,431 square feet to 222,592 square feet. Meiners adjusted the sales prices for time of sale, location, and size. The adjusted sales prices ranged from \$2.67 per square foot to \$3.38 per square foot, with a median of \$2.92 per square foot. Meiners concluded that these adjustments indicated a value of \$2.95 per square foot for the subject property's land, or \$655,000 (rounded).

Meiners then valued the improvements using *Marshall Swift Valuation Services*. Meiners' replacement cost new less depreciation for improvements was \$1,824,447, which he further reduced by \$100,000 for functional obsolescence and \$365,000 for external obsolescence. He applied functional obsolescence for Fareway's unique heating system, which uses the heat generated from refrigeration units to heat the building. The *Marshall Swift* cost to replace the heating system was approximately \$100,000 (\$3.75 per square foot). Meiners reduced the value of the improvements by this amount as the "cost to cure" of replacing Fareway's heating system with a conventional one. He reasoned that if the building was vacant it would not have a heating system and one would need to be installed. We question this adjustment since the building was occupied as of the date of the assessment and had a functioning heating system in place. Meiners stated that he did value the property as occupied, but adjusted it because a vacancy would require the heating system to be replaced. Meiners determined a final value indicated by the cost approach of \$2,015,000 (rounded).

Meiners used four sales, which occurred between 2005 and 2009, to value the subject property by the sales approach. The sales were located in Indianola, Polk City, Des Moines, and Clive. Sales prices ranged from \$550,000 to \$1,322,500 or \$37.64 per square foot to \$55.77 per square foot. Meiners adjusted for time of sale, location, size, age/condition, quality, and site (land-to-building ratio). Adjusted sales prices ranged from \$59.97 per square foot to \$74.97 per square foot. Meiners concluded that \$70 per square foot was the best representative value for the subject property and concluded a value of \$1,890,000 (rounded) using this approach.

Meiners gave greater consideration to Sale 1 and Sale 4. We note Sale 1 was a former grocery store in Indianola that sold to a church. The fact that the church is an exempt organization may distort the sale price of this property. Additionally, evidence shows this sale was subject to easements and covenants restricting the use of the property, which may have also resulted in a lower sale price.



Sale 4 is also problematic. Sale 4 was a former CompUSA store in Clive purchased for conversion to a Fareway Grocery Store. The Board of Review's evidence (Exhibits B & C) shows the easements and covenants that affect the property. Moreover, while Meiners listed this property as a sale transaction, it became clear at hearing that the transaction was actually a lease-with-purchase option, which is exercisable by either party. Although the parties agreed upon a future sale price, no sale transaction had actually occurred.

When questioned, Meiners admitted that he did not confirm the sales he used with public records and was unaware of the fifty-year deed restriction in Sale 1 (Exhibit C). These facts undermine Meiners' credibility.

Meiners stated he did not develop the income approach to value because he had insufficient data to do so. We note, however, that Fareway provided him with information concerning three of its current leases in addition to the leased Fareway in Clive.

In his reconciliation and final value opinion, Meiners testified that he relied most heavily on the sales comparison approach and gave less weight to the cost approach. He determined a final value of \$1,900,000.

In a related case (Docket No. 11-910213), Garrett Piklapp testified on behalf of Fareway concerning information common to both dockets and incorporated in this appeal record. He testified regarding his recollection of the lease terms of Meiners' Sale 4; the property located in Clive that was actually a lease transaction. Piklapp explained that all of the \$6200 monthly lease payments for the Clive property would go towards the purchase price when the purchase option was exercised. He also believed that the lease/sale option transaction in Sale 4 is a certainty and should be used as an actual sale. We disagree.

Additionally, Piklapp's testimony suggested Fareway's purchase of the existing Adel grocery store (Exhibit G) may have included consideration for goodwill or a non-compete agreement, although

there was a separate agreement covering the business interest and the declaration of value listed personal property apart from the real estate. We also note that Fareway objected to the admission of the Adel sale, Exhibits F and G, because the transaction occurred after the assessment date. The sale did occur more than a year after the assessment date and is not adjusted for this fact or other differences between it and the subject property. Therefore, we give it little consideration.

The Board of Review submitted information on three grocery store sales in the area, two of which were used by Meiners, to demonstrate the fair market value of similar properties.

Location	GBA	Year Built	Sale Date	Sale Price	Unadjusted \$SPSF
Exhibit A-Sale 1 - Indianola	14,860	1992	11/20/07	\$ 800,000	\$ 53.84
Exhibit D-Sale 4 - Clive	23,712	1989	2009	\$ 1,322,500	\$ 55.77
Exhibit F-Fareway - Adel	19,078	1993	04/06/12	\$ 1,275,000	\$ 66.83

Although these sale properties appear similar in size, design, and condition/age; for the reasons previously mentioned, we do not find the data from Sales 1 or 4 reliable indicators of value. As previously noted, the third sale the Board of Review submitted occurred more than a year after the assessment date.

Additionally, the Board of Review submitted the property record card for a Super Wal-Mart in Indianola. It is assessed at \$59.30 per square foot. We note the Wal-Mart store is 189,108 square feet, seven times the size of the 26,990 square-foot, subject property. Typically, economies of scale suggest its assessment would be less per square foot than a smaller facility such as Fareway, if comparable property. We give little weight to this evidence.

In a related case (Docket No. 11-910213), Assessor Brian Arnold testified on behalf of the Board of Review concerning information common to both dockets and incorporated in this appeal record. Arnold testified that Fareway's 2011 assessment was the result of a county-wide reappraisal of

commercial property. In the reappraisal, land values were converted to a value per-square foot method, and improvements were valued by the cost approach using the required *Iowa Real Property Appraisal Manual*. He testified a standard HVAC system was included in this calculation.

Arnold also testified regarding his concerns with Meiners' appraisal. One issue Arnold had was that Meiners' sales approach may be compromised since he found limited sales and that the reliability of this method depends on the availability of comparable sales. Arnold was also critical of Meiners using the sales approach data to justify a downward market adjustment in the cost approach, which appeared to be a cyclical method of adjustment. We, however, find this adjustment reasonable. Arnold's other concerns were whether it was appropriate for the building heating system to be valued in a hypothetical condition of vacancy, when in fact it was occupied. Additionally, Arnold pointed out that Meiners made no adjustments to the Sales 1 or 3 for deed restrictions; and used a comparable property that had not yet sold (Sale 4). We agree with Arnold that these factors lessen the reliability of Meiners' appraisal and raise doubts about Meiners' credibility.

Based on the entire record, we cannot rely on Meiners' appraisal due to the numerous deficiencies in his research, methodology, and analysis. Fareway failed to prove by a preponderance of the evidence that its property is over-assessed.

### ***Conclusions of Law***

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only



those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). Findings are “based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.” Iowa Code § 17A.12.

Property is to be valued at one hundred percent of its actual value. § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. § 441.21(1)(b). “Market value” essentially is defined as the value established in an arm’s-length sale of the property. *Id.* Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value “cannot be readily established in that manner,” “other factors” may be considered in arriving at market value. § 441.21(2). The assessed value of the property “shall be one hundred percent of its actual value.” § 441.21(1)(a).

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. Of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nonetheless, in some instances, the test may be satisfied. Fareway did not prove by a preponderance of the evidence that its property is inequitably assessed under either the *Eagle Food* or *Maxwell* tests.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). There is statutory preference for establishing market values using sales of comparable properties. *Soifer v. Floyd County Board of Review*, 759 N.W.2d 775, 779 (Iowa 2009). “To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the conditions with respect to the other land must be ‘similar’ to the property being assessed.” *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). “Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference.” *Id.* The issue of comparability has two facets: the property must be comparable and the sale of that property must be a “normal transaction.” *Id.* at 782-83. When sales of other properties are offered, they must be adjusted for differences that affect market value. *Id.* at 783. These differences could include size, age, use, condition, and location, among others. *Id.* Determining comparability of properties is left to the “sound discretion” of the trier of fact. *Id.* This Board is “free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value.” *Heritage Cablevision v. Board of Review*, 457 N.W.2d 594, 598 (Iowa 1990).

Viewing the record as a whole, we determine that the preponderance of the evidence does not support Fareway’s claim of over-assessment. Even though Fareway presented a market value appraisal of the subject property, the appraisal was not a reliable indicator of value for the reasons set forth. The property’s assessment as of January 1, 2011, is \$2,182,200; allocated \$580,000 to land value and \$1,602,200 in improvement value.



THE APPEAL BOARD ORDERS that the January 1, 2011, assessment of the Fareway property located in Norwalk, Iowa, as determined by the Warren County Board of Review, is affirmed.

Dated this 17 day of October, 2012.

Jacqueline Rypma  
Jacqueline Rypma, Presiding Officer

Richard Stradley  
Richard Stradley, Board Chair

Karen Oberman  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-17</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>